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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

4:22-CR-06001-MKD-1

V.

## DANIEL JAMES ANDERSON,

Defendant.

## United States' Sentencing Memorandum

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, Patrick J. Cashman, Assistant United States Attorney for the Eastern District of Washington, respectfully submits the following Sentencing Memorandum. The United States recommends the Court sentence the Defendant to a term of 37 months incarceration, followed by 3 years of supervised release. A sentence of 37 months incarceration is a just and reasonable sentence that is no greater than necessary to meet the interests of federal sentencing principles.

## I. Background

The United States relies on the facts provided in the plea agreement and the United States Probation Office's (USPO) draft Pre-Sentence Investigation Report

1 (PSIR). (ECF Nos. 102, 108). The United States reserves the ability to present  
2 additional facts and exhibits as necessary at the sentencing hearing to address any of  
3 the Court's concerns.

4 On March 23, 2023, Defendant plead guilty to Conspiracy to Make or Possess  
5 an Unregistered Destructive Device, in violation of 18 U.S.C. § 371. These charges  
6 stem from an investigation into a group of individuals, including the Defendant, that  
7 espoused anti-government/anti-authority ideals and prepared to take action against the  
8 government for perceived government overreach.

9 **II. Base Offense Level & Enhancements**

10 The United States concurs with the USPO's calculation of an adjusted offense  
11 level of 21. ECF No. 108, ¶49. The United States concurs the base offense level of  
12 18 should be increased by 2 levels because the improvised explosive device is a  
13 destructive device. Furthermore, the United States concurs with the USPO's inclusion  
14 of a four-level enhancement because the Defendant possessed the improvised  
15 explosive device with the knowledge, intent, or reason to believe that it would be used  
16 or possessed in connection with another felony offense. *Id.*, ¶¶39-41. The United  
17 States further concurs the Defendant's Criminal History Category is a I. *Id.*, ¶55.  
18 Accordingly, the Defendant's advisory guideline range is properly calculated at 37 to  
19 46 months. *Id.*, 108.

20 **III. Defendant's PSIR Objections**

21 The Defendant filed an objection to the PSIR. ECF No. 109. The Defendant  
22 argues a four-level enhancement for possession of the improvised explosive device  
23 with knowledge, intent, or reason to believe it would be used in connection with  
24 another felony offense should not apply. For the below reasons, the United States  
25 submits the USPO was correct in applying the four-level enhancement, pursuant to  
26 U.S.S.G. § 2K2.1(b)(6)(B) and U.S.S.G. §1B1.3.

27 Pursuant to U.S.S.G. §2K2.1(b)(6)(B), a defendant's base offense level is  
28 increased by four levels when there is a preponderance of evidence showing the

1 firearm was “used or possessed...in connection with another felony offense; or  
 2 possessed or transferred...with knowledge, intent, or reason to believe that it would be  
 3 used or possessed in connection with another felony offense.” U.S.S.G. §  
 4 2K2.1(b)(6)(B). The application notes further state U.S.S.G. § 2K2.1(b)(6)(B) applies  
 5 “if the firearm or ammunition facilitated, or had the potential of facilitating, another  
 6 felony offense or another offense, respectively.” Generally, at sentencing the United  
 7 States bears the burden of proof by a preponderance of evidence. *See United States v.*  
 8 *Restrepo*, 946 F.2d 654, 661 (9th Cir. 1991) (en banc), *cert. denied*, 503 U.S. 961  
 9 (1992). This burden is met if the Court is convinced “by a preponderance of the  
 10 evidence that the fact in question exists.” *Id.* The government does not have to prove  
 11 the actual commission of another felony offense for the enhancement to apply. *See*  
 12 *United States v. Fredrickson*, 195 F.3d 438, 440 (8th Cir. 1999). Nor does the  
 13 government have to prove the defendant had knowledge of the specific offense to be  
 14 committed. *United States v. Dodge*, 61 F.23d 142, 146 (2d Cir. 1995). The evidence  
 15 before the Court supports the conclusion that U.S.S.G. § 2K2.1(b)(6)(B) applies  
 16 because the Defendant possessed the destructive device for the purpose and with the  
 17 intent to commit an assault on a law enforcement and an assault with a deadly  
 18 weapon. *See* RCW 9A.36.011(1)(a) and RCW 9A.36.031(1)(g).

19 The Ninth Circuit previously held a district court properly applies the four-level  
 20 enhancement where there is a preponderance of evidence establishing the defendant’s  
 21 intent. *United States v. Jimison*, 493 F.3d 1148, 1149 (9th Cir. 2007). The Ninth  
 22 Circuit further concluded that the “plan to commit the felony need not be fully  
 23 developed.” *Id.* In *Jimison*, the only evidence of intent to commit another felony was  
 24 a friend of the defendant’s statement that defendant stated vague words to the effect of  
 25 “going Rambo.” *Id.*, 1150. Given the limited context in which this statement was  
 26 made, the application of the enhancement certainly appears strained. The facts of this  
 27 case significantly outweigh the minuscule evidence portrayed in *Jimison*.

28

1 Following *Jimison*, the Ninth Circuit further elaborated that for the  
2 enhancement to apply the government had shown the defendant's firm intent and  
3 ability to use the incendiary devices. *United States v. Nostar*, 590 F.3d 624, 635-36  
4 (9th Cir. 2009). Specifically, the Ninth Circuit noted the defendant's planned use to  
5 bomb companies or commodities, listing of various commodities and companies,  
6 commodities trading websites, shopping malls, and the defendant's "plan" to destroy a  
7 structure by dropping incendiaries from a gyrocopter or by using an ATV or other  
8 means. *Id.*, at 635. Furthermore, the defendant had two fully constructed devices and  
9 ingredients to make the devices. The evidence in *Nostar* proved, well beyond a  
10 preponderance, that the defendant had a firm intent to commit a felony and therefore  
11 the application of the enhancement was appropriate and not an abuse of discretion.  
12 *Id.*, at 636.

13 The facts of this case, in light of *Jimison* and *Nostar*, warrants the application of  
14 the enhancement. Here, the Defendant constructed a device that has one purpose, to  
15 hurt people. The Defendant's recorded statements to the CHS further corroborate the  
16 intent behind the Defendant's construction of the device. Moreover, the Defendant  
17 specifically stipulated in the plea agreement that he stated these devices "could be  
18 used at protests or thrown over the front line of law enforcement officers or explode  
19 behind them." ECF No. 102, pg. 7. The Defendant further stipulated in the plea  
20 agreement that he told the CHS he designed the device "to be small and portable so he  
21 could transport them in a backpack using his motorcycle." ECF No. 102, pg. 7.  
22 Coincidentally, the device constructed by the Defendant is small and easily concealable.  
23 Furthermore, the Defendant did have a motorcycle that he could have used to deploy  
24 the device at a time he deemed appropriate.

25 Moreover, the Defendant's conduct and interactions evidence his intent to  
26 commit a future felony offense. In 2015, the Office of the Director of National  
27 Intelligence produced a document entitled Mobilization Indicators, that was later  
28 updated in 2017, 2019, and 2021. This document provides significant insight into

1 common indicators of mobilization of a violent extremist to engage in acts of  
2 violence. The document defines a “motivation indicator” as “physical or virtual  
3 actions that build, solidify, or communicate violent ideological beliefs; these  
4 indicators do not necessarily suggest an impending attack or violent extremist travel.”  
5 While the indicators may not mean an attack is immediately likely occur, they are  
6 factors to be considered to engage in early intervention to prevent suffering. In this  
7 case, the Defendant exhibited numerous indicators of intent to engage in violent acts,  
8 including:

- Engaging in a threatening interaction (the Defendant indicated that he geared up to confront law enforcement when they responded to an incident near his apartment);
- Professing intent to harm law enforcement if law enforcement takes action or statement of intent to harm others (the Defendant was part of a group that espoused their goal was to wait for law enforcement to overreach and then conduct an attack or unlawful violent take action);
- Posing with weapons and imagery associated with violent extremism in photographs or videos (the Defendant was previously photographed with other members of the groups in camouflage and masks, displaying weapons, and holding a flag of the group);
- Expressing acceptance of violence as a necessary means to achieve ideological goals and saying that nonviolent means are ineffective or unavailable (the Defendant specifically stated in writing to the group that he was stepping away because others were not taking the training serious enough because they were training to kill people);<sup>1</sup>

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26 <sup>1</sup> *US Violent Extremist Mobilization Indicators*, Office of the Director of National  
27 Intelligence, 2021 Edition.

28

1 The Defendant seemingly attempts to minimize the significance of the  
2 Defendant's statements by self-servingly claiming, after the fact, that he was simply  
3 bragging, that he was inept, and that his destructive device was crudely constructed.  
4 However, the facts and stipulations in this case belie that assertion and defy a  
5 commonsense approach.

6 The United States submits less weight should be given to the Defendant's  
7 claimed statements of bragging because of the timing in which he made them, i.e.  
8 when he was confronted by law enforcement and to his hired expert. Moreover, the  
9 fact the Defendant complied with law enforcement when contacted rather than attack  
10 them, while the appropriate and right response, bears little on the intent of the  
11 Defendant at the time that he constructed and possessed the destructive device. It is  
12 important to note, the Defendant was intentionally contacted outside of his home to  
13 limit his ability to have access to any type of dangerous weapon. Thus, his only  
14 realistic course of action at the time of his detention was to comply with the orders of  
15 the officers engaging him. Moreover, the weight of the Defendant's self-serving  
16 statements is further diminished because the Defendant could just as easily have had a  
17 change of heart or opening of his eyes to the wrongfulness of his actions at the time  
18 that he was confronted and saw that it was in his best interest to comply with law  
19 enforcement.

20 Furthermore, the fact the Defendant's device was crudely made or that he  
21 appeared to be less savvy in his design does not detract from his ability to use the  
22 device. At the time of this arrest, the Defendant was in possession of the destructive  
23 device, in fully constructed form. This device if detonated could have hurt individuals  
24 around the detonation. It is irrelevant if the device could hurt one person or one  
25 hundred people for the purpose of applying the enhancement.

26 At its root, the United States does not have to prove the actual commission of  
27 the offense, nor does the United States have to prove that the Defendant fully or near  
28 fully developed a plan, as in *Nostar*, to establish the application of the enhancement.

1 Rather, the United States must show that the Defendant's possession of the firearm or  
 2 destructive device facilitated or had the potential to facilitate the commission of a  
 3 separate felony offense he intended to commit in the future. The facts of this case  
 4 prove by a preponderance of the evidence that the Defendant constructed this  
 5 destructive device for the purpose of committing a future assault on law enforcement.  
 6 Accordingly, the Court should find the four-level enhancement, pursuant to U.S.S.G.  
 7 § 2K2.1(b)(6)(B), applies.

8 Assuming *arguendo*, the Court does not apply the enhancement pursuant to  
 9 U.S.S.G. § 2K2.1(b)(6)(B), the United States maintains a sentence of 37 months  
 10 imprisonment remains a fair and appropriate sentence when considering the 18 U.S.C.  
 11 § 3553(a).<sup>2</sup>

12 IV. 18 U.S.C. § 3553(a)

13 Turning to the application of the 18 U.S.C. § 3553(a) factors, a sentence of 37  
 14 months imprisonment followed by three-years supervised release is a fair sentence  
 15 that is no greater than necessary to meet the interests of federal sentencing principles.  
 16 When applying the 18 U.S.C. § 3553(a) factors, a sentence of 37 months and three-  
 17 years supervised release is appropriate.

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19 <sup>2</sup> The United States does not seek the application of U.S.S.G. § 3A1.4 because the  
 20 evidence does not support a finding that the offense "involved, or was intended to  
 21 promote, a federal crime of terrorism" as specifically defined in 18 U.S.C. §  
 22 2332b(g)(5). However, in considering the application notes for § 3A1.4, the  
 23 Sentencing Commission noted an upward departure would be warranted if "(A) the  
 24 offense was calculated to influence or affect the conduct of government by  
 25 intimidation or coercion, or to retaliate against government conduct but the offense  
 26 involved, or was intended to promote, an offense other than one of the offenses  
 27 specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B). See U.S.S.G. §3A1.4, app. n.  
 28 4.

## 1 a. Nature, Circumstances, and Seriousness of the Offense:

2 The nature and circumstances of this case warrant a 37-month sentence. The  
3 Defendant's acts in this case are beyond serious and egregious. The Defendant  
4 thought through, calculated, and constructed a homemade explosive device. The  
5 destructive device was made from items that were easily obtainable and accessible to  
6 the Defendant and likely not to raise concerns if bought in bulk. While the Defendant  
7 minimizes the nature of the device, whether it is a device that could inflict maximum  
8 devastation or not is irrelevant to the inquiry of the seriousness of the Defendant's  
9 actions. The Defendant had no justification, beyond his criminal intent, to construct  
10 this device. The Defendant was not simply constructing a device that he could light  
11 off in his backyard and it would make noise. Rather, the Defendant constructed a  
12 device that in his own words would throw shrapnel 20 yards. That shrapnel was glass  
13 and metal shards that he specifically inserted into the device. This destructive device  
14 had one purpose alone and that was to hurt people. This factor weighs in favor of  
15 sentencing the Defendant to a period of time that captures of the gravity of his actions.  
16 A sentence of 37 months is sufficient to adequately reflect the seriousness and  
17 egregiousness of the Defendant's actions.

## 18 b. Characteristics and Criminal History of Defendant:

19 The Defendant has no criminal history aside from the current conviction. The  
20 Defendant has some higher education from Washington State University in the Tri-  
21 Cities. ECF No. 108, ¶76. At the time of this offense, the Defendant was  
22 unemployed. Following his indictment, the Defendant became employed at JMC  
23 Motors. Id., ¶77. However, that employment will end within 2 weeks of his  
24 sentencing. Id. The Defendant has not served in the military. Id., ¶81. Given the  
25 Defendant's financial situation, it does not appear a fine to be an appropriate sentence.  
26 Id., ¶86. While the Defendant's lack of criminal history provides mitigation, it is  
27 limited given the gravity of the Defendant's actions in this case. Accordingly, the  
28

1 United States submits this factor is neutral and a sentence of 37 months remains  
2 appropriate.

3 c. Public Safety, Deterrence, and Consistency of Sentences:

4 A sentence of 37 months incarceration is appropriate to protect the public and  
5 meet the interests of general and specific deterrence. A sentence of 37 months will  
6 ensure the public knows engaging in criminal acts such as these are met with  
7 significant consequences.

8 Furthermore, a sentence of 37 months is consistent with other sentences for  
9 similar misconduct. *See United States v. Young*, 265 Fed.Appx. 573, \*1 (9th Cir.  
10 2008) (unpublished) (defendant's sentence of 37 months imprisonment was  
11 appropriate where defendant was convicted of possession of a destructive device); *see*  
12 *also United States v. Dominguez*, 104 F.3d 366, 1 (9th Cir. 1996) (unpublished)  
13 (defendant sentenced to 37 months imprisonment after having plead guilty to  
14 possession of an unregistered destructive device). Additionally, other cases have  
15 sentenced individuals to terms of confinement significantly above the United States'  
16 recommendation when warranted by other factors beyond the possession of the  
17 destructive device. *See United States v. Harris*, 96 Fed.Appx. 478, \*1 (D. AZ. April  
18 23, 2004) (defendant sentenced to 56 months imprisonment for possession of short-  
19 barreled shotgun and possession of three improvised explosive devices); *see also*  
20 *United States v. Bauer*, 173 F.3d 862, \*1 (9th Cir. 1999) (sentencing two members of  
21 the "Viper Team" militia who were convicted of conspiracy to make and possess  
22 unregistered destructive devices and other offenses to 108 months and 71 months);  
23 *United States v. Varela*, 809 Fed.Appx. 411, 412 (9th Cir. 2020) (unpublished)  
24 (defendant sentenced to 72 months in prison for felon in possession of a firearm and  
25 possession of an unregistered destructive device but remanded to account for one level  
26 reduction for acceptance of responsibility). Accordingly, when considering the need  
27 for consistency in sentencing, the United States recommendation is in the heartland of  
28 an appropriate sentence for this misconduct.

d. Rehabilitation and Programming:

A sentence of 37 months is appropriate because it will allow the Defendant to avail himself of the numerous educational and vocational programming available in Bureau of Prisons. This factor is neutral in fashioning an appropriate sentence.

Moreover, the Defendant should be sentenced to a term of 3 years supervised release. This will provide the Defendant the proper amount of supervision and opportunity to obtain employment and services, particularly mental health services, with the assistance of a USPO.

## V. Conclusion

Accordingly, the United States recommends the Court impose a sentence of 37 months imprisonment followed by 3 years of supervised release. The above sentence is a just sentence that is no greater than necessary to meet the interests of federal sentencing.

Dated: August 2, 2023.

Vanessa R. Waldref  
United States Attorney

s/ Patrick J. Cashman  
Patrick J. Cashman  
Assistant United States Attorney

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Nick Mirr  
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s/ Patrick J. Cashman  
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